



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/722,968

11/26/2003

Li Ding

074822-00400

9003

95319 7590 01/20/2011

HANDAL & MOROFSKY, LLC
501 KINGS HIGHWAY EAST
Fairfield, CT 06825-4867

EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

01/20/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/722,968	Applicant(s) DING ET AL.	
	Examiner GINA C. YU	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on September 30, 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47, 49-53, 55 and 56 is/are pending in the application.
- 4a) Of the above claim(s) 1-25 and 43-45 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 52, 53 and 55 is/are allowed.
- 6) ☒ Claim(s) 26-42, 46, 47, 49-51 and 56 is/are rejected.
- 7) ☒ Claim(s) 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>September 30, 2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Pursuant to the decision of the Office of Petitions on October 25, 2010 to revive the previously abandoned application, prosecution is resumed.

Receipt is acknowledged of amendment filed on September 30, 2010.

All of the previous claim rejections which were indicated in the Office action dated June 23, 2009 are withdrawn in view of applicant's claim amendment.

Claims 1-47, 49-53, 55 and 56 are pending, of which claims 1-25 and 43-45 are withdrawn from consideration.

Election/Restrictions

This application contains claims 1-25 and 43-45 drawn to an invention nonelected with traverse in the reply filed on May 1, 2007.

A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Objections

Claim 46 is objected to because of the following informalities: The claim contains reference paragraph numbers. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26-42, 46, 47, 49-51 and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 26 recites the broad recitation "wherein said density-control agent is present in a quantity sufficient to provide a desired gel bead density", and the claim also recites "an effective quantity of a density-control agent that reduces the density of the resulting beads to promote uniform dispersion in the liquid medium by providing the bead with a desired bulk density" which is the narrower statement of the range/limitation.

The remaining claims are rejected for depending on the indefinite base claim.

Allowable Subject Matter

Claims 52, 53 and 55 are allowed.

Claims 26 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 27-42, 46, 47, 49-51 and 56 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Claims 53 and 55 are directed to methods of making density-controlled beads dispersible in a liquid medium for cosmetic compositions, wherein particles comprising entrapped gas are used as density reducing agents.

In Delrieus et al. (US 6319507 B1), Example 15 discloses a method of producing agar beads that comprise (i) an active ingredient (fragrance); (ii) an amount of porous silica shells having apparent density 0.5-1.0 grams per cubic inch; and (iii) a gelling agent (agar). The production method comprises (a) dissolving the gelling agent (1.5 g of agar granules) in a hot aqueous solution (97 g of water); (b) mixing 10 g of dipropylene glycol with 1.6 g of silica shells at room temperature; (c) combining the mixtures of (a) and (b) with PG-hydroxyethylcellulose stearyldimonium chloride, a restraining polymer in water; and (d) injecting or dispersing the mixture in cold oil which results in stable beads. Prior art silica has porous structure and contains a solvent (polyol) during the mixing step, thus does not meet the instant claim limitation which

Art Unit: 1617

requires a density reducer contains entrapped gas. Nor is there any teaching, suggestion or motivation in Delrieus to substitute the porous silica shell with the density reducing agents of instant claims. Thus 52, 53 and 55 are viewed nonobvious over the cited prior art.

Response to Arguments

Applicant's arguments filed on September 30, 2010, with respect to claims 26-42, 46, 47, 49-53, 55 and 56 have been fully considered and are persuasive. The rejection made under 35 U.S.C. § 102 (b) over Delrieus et al. (US 6319507 B1) as evidenced by Robinson et al. (US 6852266) has been withdrawn.

Conclusion

Claims 1-25 and 43-45 are withdrawn from consideration and must be canceled in response to this final Office action.

Claims 26-42, 46, 47, 49-51 and 56 are rejected.

Claims 52, 53 and 55 are allowed.

Claim 46 is objected to.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Art Unit: 1617

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Thursday, from 8:00AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fereydown G. Sajjadi can be reached on 571-272-3311. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GINA C. YU/
Primary Examiner, Art Unit 1617